

EXHIBIT A

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on behalf of themselves and others similarly situated

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CAVIAR, INC. d/b/a TRY CAVIAR

JUDICIAL ARBITRATION AND MEDIATION SERVICES

IN RE: CAVIAR, INC. dba TRY CAVIAR

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Arbitrator: Michael Loeb

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release, including Exhibits A through C hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Claimants Jeffry Levin, Nadezhda Rosen, and La’Dell Brewster (collectively, “Named Claimants”), on behalf of themselves and the Settlement Class as defined below, and Respondent Caviar, Inc. dba Try Caviar (“Respondent” or “Caviar”). Named Claimants and Respondent (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and dismissal with prejudice of all class and PAGA claims brought, or attempted to be brought, against Caviar in *McKean v. Caviar*, JAMS Ref. No. 1100082951 (as amended and re-captioned *McKean, Levin, Rosen, and Brewster, on behalf of themselves and all others similarly situated v. Caviar, Inc. d/b/a Try Caviar*, JAMS Ref. No. 1100082951 on April 11, 2017), including as amended pursuant to this Agreement (the “Action”), and all claims based on or reasonably related thereto. Claimant Sean McKean is not a Named Claimant for purposes of this Agreement, and will be required to decide whether to participate in (or opt out of) the settlement in the same way as other Class Members. This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Arbitrator and, as necessary and applicable, subject to judicial review.

I. RECITALS

1. This Agreement is made in consideration of the following facts:

2. WHEREAS, on March 19, 2015, Claimant Jeffry Levin filed a complaint in the Northern District of California asserting various wage-related and expense-reimbursement claims against Caviar on behalf of himself and a proposed class of couriers nationwide, *see Levin v. Caviar*, No. 15-cv-1285 (N.D. Cal.), Dkt. 1;

3. WHEREAS, on November 16, 2015, Magistrate Judge Elizabeth Laporte held that the arbitration clause in Caviar’s Terms of Service was binding, controlling, and enforceable, and granted Caviar’s motion to compel Claimant Levin to arbitrate his claims against Caviar, *see Levin v. Caviar*, No. 15-cv-1285 (N.D. Cal.), Dkt. 43;

1 4. WHEREAS, on June 1, 2016, Claimant Levin filed a Notice of Appeal of Judge
2 Laporte's order compelling arbitration, which appeal is currently pending before the Ninth
3 Circuit, *see Levin v. Caviar*, No. 16-15975 (9th Cir.);

4 5. WHEREAS, on September 23, 2015, Claimant Sean McKean filed a demand for
5 arbitration against Caviar asserting various wage-related and expense-reimbursement claims
6 against Caviar, and the Parties agreed to appoint Michael Loeb of JAMS as the arbitrator, *see*
7 *McKean v. Caviar*, JAMS Ref. No. 1100082951;

8 6. WHEREAS, on November 7, 2016, Claimants Nadezhda Rosen and La'Dell
9 Brewster filed a complaint in the California Superior Court in and for the County of San
10 Francisco asserting claims under the California Private Attorneys General Act, Cal. Lab. Code §
11 2698 *et seq.*, on behalf of themselves, the state, and other "aggrieved" couriers, *see Rosen and*
12 *Brewster v. Caviar*, No. CGC-16-555225;

13 7. WHEREAS, the Named Claimants have filed an amended demand for arbitration
14 in connection with the existing arbitration styled *McKean v. Caviar*, JAMS Ref. No. 1100082951
15 (the "Action");

16 8. WHEREAS, the Named Claimants allege generally that Caviar improperly
17 classified them and all putative Settlement Class Members as independent contractors rather than
18 employees, and assert derivative claims related thereto;

19 9. WHEREAS, Caviar states that couriers providing services using the Caviar
20 platform are independent contractors, and not employees of Caviar, and are thus properly
21 classified under any and all applicable law;

22 10. WHEREAS, Caviar denies the allegations in the Action; denies that it has engaged
23 in any wrongdoing; denies that any Settlement Class Member is or ever was an employee of
24 Caviar; denies that it willfully misclassified any Settlement Class Member; denies that it failed to
25 pay any Courier a minimum wage to the extent required by law; denies that it failed to pay any
26 Courier overtime pay to the extent required by law; denies that it failed to reimburse any Courier
27 for business expenses to the extent required by law; denies that it failed to provide any Courier
28 with wage statements to the extent required by law; denies that it failed to provide Couriers with

1 meal and rest breaks to the extent required by law; denies that it forced any Courier to agree to a
2 written contract term in violation of law; denies that it failed to provide sick leave to any Courier
3 to the extent required by law; denies that it failed to obtain workers' compensation insurance for
4 any Courier to the extent required by law; denies that it failed to maintain accurate payroll records
5 to the extent required by law; denies that the Named Claimants' allegations state valid claims;
6 denies that a class could properly be certified in the Action; and states that it is entering into this
7 Settlement Agreement solely to eliminate the uncertainties, burden, expense, and delay of further
8 protracted litigation;

9 11. WHEREAS, the Parties attended a full-day mediation with the Hon. James L.
10 Warren (Ret.) before agreeing to the terms of an arm's-length settlement (the "Settlement
11 Agreement");

12 12. WHEREAS, the Named Claimants and Class Counsel believe that the Settlement
13 Agreement provides a favorable recovery for the Settlement Class, based on the claims asserted,
14 the evidence developed, and the damages that might be proven against Caviar in the Action. The
15 Named Claimants and Class Counsel further recognize and acknowledge the uncertain outcome
16 and risk of the Action (as well as previously filed proceedings against Caviar) in light of the
17 arbitration clause and class-action waiver present in the Caviar Courier Terms and Conditions
18 signed by the Named Claimants as well as the Settlement Class. The Named Claimants and Class
19 Counsel further recognize and acknowledge the expense and length of continued proceedings
20 necessary to prosecute the Action against Caviar through trial and appeals. They have also
21 considered the uncertain outcome and the risk of any litigation or arbitration, especially in
22 complex proceedings such as the Action, as well as the difficulties and delays inherent in any
23 such litigation or arbitration. They are also mindful of the inherent challenges of proof and the
24 strength of the defenses to the alleged claims, and therefore believe that it is desirable that the
25 Released Claims be fully and finally compromised, settled, and resolved with prejudice and
26 enjoined as set forth herein;

27 13. WHEREAS, the Named Claimants and Class Counsel, based on their own
28 independent investigations and evaluations, have examined the benefits to be obtained under the

1 terms of this Settlement Agreement, have considered the claims of the Named Claimants, the
2 claims of the average Settlement Class Member, the risks associated with the continued
3 prosecution of the Action, and the likelihood of success on the merits of the Action, and believe
4 that, after considering all the circumstances, including the uncertainties surrounding the risk of
5 further litigation or arbitration and the defenses that Caviar has asserted and could assert, the
6 proposed Settlement set forth in this Agreement is fair, reasonable, adequate, in the best interests
7 of the Named Claimants and the Settlement Class, and confers substantial benefits upon the
8 Settlement Class;

9 14. WHEREAS, Named Claimants warrant and represent that they are effecting this
10 Settlement and executing this Agreement after having received full legal advice as to their
11 respective rights and have had the opportunity to obtain independent counsel to review this
12 Agreement;

13 15. WHEREAS, the Parties further agree that the Agreement, the fact of this
14 Settlement, any of the terms in the Agreement, and any documents filed in support of the
15 Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as, an
16 admission, finding, or evidence of: (i) any wrongdoing, (ii) any violation of any statute or law,
17 (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, or
18 (iv) the propriety of certifying a litigation or arbitration class in the Action or any other
19 proceeding, and shall not be used by any Person for any purpose whatsoever in any legal
20 proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms
21 of the Agreement. There has been no final determination by any court or arbitrator as to the
22 merits of the claims asserted by Named Claimants against Caviar, nor has there been any final
23 determination as to whether a class should be certified, other than for settlement purposes only;

24 16. WHEREAS, for settlement purposes only, Caviar will stipulate to the certification
25 of class claims that are subject to the certification requirements of the JAMS Class Action
26 Procedures. Caviar disputes that certification is proper for the purposes of litigating and/or
27 arbitrating the class claims proposed in or flowing from the operative demand in the Action;
28

17. WHEREAS, the applicable Caviar Courier Terms and Conditions contains a class-action waiver that does not permit class-wide arbitration. Caviar has stipulated to the certification of class claims in the Action for settlement purposes only. Such stipulation does not in any way waive Caviar's right to assert and/or rely on the class-action waiver and arbitration clause in the Caviar Courier Terms and Conditions in any later proceeding, including but not limited to in this Action to the extent that the Settlement Agreement is not finally approved by the Arbitrator or is not properly entered or approved by a court. Indeed, under Judge Laporte's decision in ordering Mr. Levin to arbitration, there can be no class action brought in Court or even in arbitration, and any opt-outs must proceed with individual arbitration.

18. WHEREAS, the Parties desire to compromise and settle all issues and claims that have been, could have been, or should have been brought against Caviar in the Action;

19. WHEREAS, on April 12, 2017, the Parties entered into a Settlement Agreement, signed by counsel for the Parties, which the Arbitrator preliminarily approved on April 24, 2017;

20. WHEREAS, the Parties subsequently agreed to modify the April 12, 2017 Settlement Agreement, and this Settlement Agreement replaces and supersedes the April 12, 2017 Settlement Agreement in its entirety;

21. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by the Named Claimants, for themselves and on behalf of the Settlement Class, and by Caviar that, subject to the final approval of the Arbitrator, and as necessary and applicable, a court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the Released Claims shall be finally and fully compromised, settled, and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

II. DEFINITIONS

22. In addition to the terms defined elsewhere in this Agreement, the following terms, used in this Settlement Agreement, shall have the meanings specified below:

a. “Amended Demand for Settlement” means the Amended Demand in the Action, without material variation from Exhibit C, that Class Counsel filed pursuant to Paragraph 23.

b. “Arbitrator” means JAMS Arbitrator Michael Loeb.

c. “Asserted Claims” means all claims asserted in the Amended Demand for Settlement and their associated allegations and prayer for relief.

d. “Authorized Claimant” means any Settlement Class Member who submits a valid and timely Claim that qualifies for a payment under the terms of this Settlement Agreement.

e. “Bar Date” means the final date by which a Claim Form must be postmarked or submitted online in order for a Settlement Class Member to be eligible to receive a Settlement Payment. The Bar Date shall be a date agreed to by the parties, approximately 60 days after the initial distribution of funds.

f. “Claim” means the submission to be made by Settlement Class Members, using the Claim Form.

g. “Claim Form” means the claim form to be developed by the Parties and the Settlement Administrator, or an electronic equivalent of such claim form.

h. “Class Counsel” means Lichten & Liss-Riordan, P.C.

i. “Class Members’ Released Claims” means claims that were or could have been pled in the Amended Demand for Settlement and that arise from allegations of independent contractor misclassification (*i.e.*, claims that Class Members were improperly classified as independent contractors instead of employees). The Class Members’ Released Claims expressly include any and all past and present claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including but not limited to those based in common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, injunctive relief, penalties,

1 interest, attorneys' fees, costs, or disbursements, including but not limited to those incurred by
 2 Class Counsel or any other counsel representing the Named Claimants or any Settlement Class
 3 Members, other than those expressly awarded by the Arbitrator in the Fee and Expense Award
 4 authorized by this Agreement) that are based on or arise out of allegations that Class Members
 5 were misclassified as independent contractors instead of employees, including misclassification-
 6 related claims for unpaid wages (including claims for minimum wage, regular wages, overtime,
 7 final wages, calculation of the correct overtime or regular rate, and meal period and rest period
 8 premiums, and sick leave), expense reimbursements, interest, penalties (including waiting time
 9 penalties pursuant to Labor Code section 203, wage statement penalties pursuant to Labor Code
 10 section 226, and civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004
 11 (Labor Code sections 2698, *et seq.*) ("PAGA")), claims pursuant to Labor Code sections 200–
 12 204, 206.5, 207, 208, 210–214, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 226.8,
 13 227.3, 351, 353, 432.4, 510, 512, 551–552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3,
 14 1197, 1197.1, 1198, 2753, 2802, 2804, and 2699 *et seq.*, Code of Civil Procedure section 1021.5,
 15 California Code of Regulations, Title 8, Sections 11010 and 11040, the Industrial Welfare
 16 Commission Wage Orders, and claims under Business and Professions Code section 17200, *et*
 17 *seq.*, the federal Fair Labor Standards Act, claims for attorneys' fees and costs, and unfair
 18 business practices. The Class Members' Released Claims do not include any claims by Class
 19 Members that they did not receive payment for orders delivered, or other payments required
 20 under the Courier Terms and Conditions or other contracts with or representations made by
 21 Caviar, unless those claims are based on alleged misclassification as an independent contractor.

22 j. "Class Notice" means the notice of settlement to be provided to Settlement
 23 Class Members pursuant to the JAMS Class Action Procedures, the Preliminary Approval Order,
 24 and this Settlement Agreement.

25 k. "Courier" means any individual who has been approved by Caviar to use
 26 the Caviar smartphone application to make food deliveries and who has made at least one
 27 delivery.
 28

1 l. “Court” means the California Superior Court in and for the County of San
2 Francisco.

3 m. “Effective Date” means seven (7) days after which all of the following
4 events have occurred: (i) the Final Approval Order has been entered; (ii) the Court has issued a
5 Judgment confirming the Final Approval Order and (iii) the Court’s Judgment has become final.

6 n. “Enhancement Payment” means the amount approved by the Arbitrator to
7 be paid to each of the Named Claimants, in addition to their respective payments under the Plan
8 of Allocation, and as further described in Paragraph 39, in recognition of their efforts in coming
9 forward as Named Claimants and as consideration for a full, general, and comprehensive release
10 of the Named Claimants’ General Released Claims. Under the terms of Paragraph 39,
11 Enhancement Payments are payable fourteen (14) days after the Effective Date. Enhancement
12 Payments shall be considered non-wages for which IRS Form 1099 will be issued to each of the
13 Named Claimants.

14 o. “Escrow Account” means the bank account maintained by the Escrow
15 Agent into which the Settlement Fund shall be deposited, pursuant to the Escrow Agreement,
16 which shall be agreed to by the Parties.

17 p. “Escrow Agent” means Garden City Group, the entity mutually agreed
18 upon by Caviar and Class Counsel to maintain the Escrow Account, into which the Settlement
19 Fund shall be deposited in accordance with the terms of this Agreement.

20 q. “Exclusion/Objection Deadline” means the final date by which a
21 Settlement Class Member may either (i) object to any aspect of the Settlement (pursuant to the
22 Preliminary Approval Order and Section XI), or (ii) request to be excluded from the Settlement
23 (pursuant to the Preliminary Approval Order and Section X). The Exclusion/Objection Deadline
24 is July 13, 2017.

25 r. “Fairness Hearing” means the hearing at or after which the Arbitrator will
26 make a final decision pursuant to the JAMS Class Action Procedures, Rule 6 as to whether the
27 Settlement is fair, reasonable, and adequate and, therefore, finally approved by the Arbitrator.
28

1 s. “Fee and Expense Award” means the attorneys’ fees and expenses as
2 awarded by the Arbitrator to Class Counsel and as further described in Paragraph 40. Under the
3 terms of Paragraph 40, the Fee and Expense Award is payable fourteen (14) days after the
4 Effective Date.

5 t. “Final,” when referring to a Judgment of the Court, means that (i) the
6 judgment is a final, appealable judgment; and (ii) either (a) no appeal has been taken from the
7 judgment as of the date on which all times to appeal therefrom have expired, or (b) an appeal or
8 other review proceeding of the judgment having been commenced, such appeal or other review is
9 finally concluded and no longer is subject to review by any court, whether by appeal, petitions for
10 rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or
11 otherwise, and such appeal or other review has been finally resolved in such manner that affirms
12 the Judgment in its entirety.

13 u. “Final Approval Order” means the Final Award and order, which will be
14 agreed to by the Parties, that is entered by the Arbitrator finally approving the Settlement and this
15 Settlement Agreement in all respects, as further set forth in Paragraph 29.

16 v. “Judgment” means the judgment to be entered in the Action confirming the
17 Arbitrator’s Award granting final approval of this Settlement, pursuant to Paragraph 32 and
18 elsewhere in this Agreement.

19 w. “Legally Authorized Representative” means an
20 administrator/administratrix, personal representative, or executor/executrix of a deceased
21 Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated
22 Settlement Class Member; or any other legally appointed Person responsible for handling the
23 business affairs of a Settlement Class Member.

24 x. “Mailed Notice Date” means the date of the initial distribution of the
25 Notice of Settlement of Class Action to potential Settlement Class Members, as provided in
26 Paragraphs 23 and 61.

27 y. “Named Claimants’ General Released Claims” means any and all past,
28 present, and future claims, actions, demands, causes of action, suits, debts, obligations, damages,

1 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or
2 potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of
3 recovery (including but not limited to those based in contract or tort, common law or equity,
4 federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory,
5 consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys'
6 fees, costs, or disbursements against the Releasees (as defined below), including unknown claims
7 covered by California Civil Code section 1542, as quoted below in Paragraph 74, by the Named
8 Claimants, arising during the period from the beginning of the Named Claimants' relationship
9 with Caviar (*i.e.*, the date on which each of them applied to accept Orders through the Caviar app)
10 to the date on which the Arbitrator enters the Final Approval Order of this Settlement, for any
11 type of relief that can be released as a matter of law, including, without limitation, claims for
12 wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated
13 damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable
14 relief (including injunctive relief) with the exception of any claims which cannot be released as a
15 matter of law. Claimants Levin, Rosen, and Brewster will generally release all known and
16 unknown claims against Caviar, and waive the application of section 1542 of the California Civil
17 Code conditioned upon Arbitrator approval of an Enhancement Payment for them. The claims
18 released pursuant to this paragraph include but are not limited to the Class Members' Released
19 Claims, as well as any other claims under any provision of the Fair Labor Standards Act, the
20 California Labor Code (including sections 132a, 4553 *et seq.*) or any applicable California
21 Industrial Welfare Commission Wage Orders, and claims under state or federal discrimination
22 statutes, including, without limitation, the California Fair Employment and Housing Act,
23 California Government Code section 12940 *et seq.*; the Unruh Civil Rights Act, California Civil
24 Code section 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964,
25 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age
26 Discrimination in Employment Act of 1967, as amended; the Employee Retirement Income
27 Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and
28 interpretive guidelines.

1 z. “Net Settlement Fund” means the Settlement Fund less the PAGA
2 Payment, the Fee and Expense Award, Enhancement Payments, escrow fees, costs, Taxes, and
3 expenses (including, but not limited to, any cost and expenses paid out of the Notice and
4 Administration Fund, any estimated future costs and expenses approved by the Arbitrator) as
5 further provided in this Agreement, and all other funds, payments, and amounts provided for in
6 subparts (a) through (f) of Paragraph 81.

7 aa. “Notice and Administration Fund” means the fund consisting of one
8 hundred thousand dollars (\$100,000) advanced by Caviar from the Settlement Amount to the
9 Escrow Account to be used by the Settlement Administrator at the direction of Class Counsel to
10 pay the costs of notifying the Settlement Class Members, soliciting the filing of Claims by
11 Settlement Class Members, assisting Settlement Class Members in making their Claims, and
12 otherwise administering, on behalf of the Settlement Class Members, the Settlement embodied in
13 this Settlement Agreement, as further described in this Agreement. The monies in the Notice and
14 Administrative Fund are part of the Settlement Amount to be paid by Caviar. If for any reason
15 the Settlement does not become Final or the Effective Date does not occur, the remaining money
16 deposited into the Notice and Administration Fund shall be returned to Caviar, in accordance with
17 the terms of the Escrow Agreement, and as further provided in Paragraph 69.

18 bb. “Notice of Settlement of Class Action” means the long-form Arbitrator-
19 approved notice, without material variation from Exhibit B.

20 cc. “Opt-Out List” means the Arbitrator-approved list of all Persons who
21 timely and properly requested exclusion from the Settlement Class, as further provided in Section
22 X and Paragraph 29.

23 dd. “PAGA Claims” means the Named Claimants’ representative action
24 seeking penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) alleged in the
25 operative complaint in the Action. All Class Members will be bound by the settlement and release
26 of the PAGA Claims or remedies described herein regardless of whether they submit requests for
27 exclusion, which do not apply to the PAGA Claims.
28

1 ee. "PAGA Payment" means a total payment of one hundred thousand
 2 (\$100,000) to settle all claims under the PAGA. From this amount, seventy-five percent (75%),
 3 or seven-five thousand dollars (\$75,000), will be paid to the California Labor and Workforce
 4 Development Agency ("LWDA") for civil penalties pursuant to the PAGA and twenty five
 5 percent (25%), or twenty-five thousand dollars (\$25,000), will be distributed to Settlement Class
 6 Members.

7 ff. "Person" means any individual, corporation, partnership, association,
 8 affiliate, joint stock company, estate, trust, unincorporated association, entity, government and
 9 any political subdivision thereof, or any other type of business or legal entity.

10 gg. "Plan of Allocation" means the plan for allocating the Net Settlement Fund
 11 between and among Authorized Claimants as approved by the Arbitrator, as further set forth in
 12 Paragraphs 41-50. Settlement Payments pursuant to the Plan of Allocation shall be considered
 13 non-wages for which IRS Form 1099 will be issued to Authorized Claimants if required.

14 hh. "Preliminary Approval Date" means the date that the Arbitrator will enter a
 15 Preliminary Approval Order and thus: (i) preliminarily approve the Settlement, and the exhibits
 16 thereto, and (ii) enter an award in the form of an order providing for notice to the Settlement
 17 Class, an opportunity to opt out of the Settlement Class, an opportunity to submit timely
 18 objections to the Settlement, a procedure for submitting claims, and setting a hearing on the
 19 fairness of the terms of Settlement, including approval of attorneys' fees and costs.

20 ii. "Preliminary Approval Order" means the award and Order that the Named
 21 Claimants and Caviar will obtain from the Arbitrator, attached hereto as Exhibit A. Entry of the
 22 Preliminary Approval Order will constitute preliminary approval of the Settlement Agreement.
 23 The Preliminary Approval order attached hereto as Exhibit A replaces and supersedes the prior
 24 Preliminary Approval Order entered by the Arbitrator on April 24, 2017 in its entirety.

25 jj. "Released Claims" means (i) Class Members' Released Claims and
 26 (ii) Named Claimants' General Released Claims.

27 kk. "Released Parties" or "Releasees" means (i) Caviar and its past, present,
 28 and future parents (including but not limited to Square, Inc.), subsidiaries, affiliates, divisions,

1 joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic,
 2 that are owned or controlled by Caviar and (ii) the past, present, and future shareholders, officers,
 3 directors, members, agents, employees, independent contractors, consultants, representatives,
 4 fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the
 5 entities in Part (i) of this Subparagraph.

6 ll. “Order” means the pickup and delivery of a food order from a restaurant to
 7 a customer by a Courier. An Order begins when the Courier uses the Caviar smartphone
 8 application to accept an order request and such acceptance is recorded by Caviar. An Order ends
 9 when the Courier selects the “delivered” or equivalent option in the Caviar smartphone
 10 application (or, in rare instances, when the dispatcher indicates the delivery has concluded) and
 11 such selection is recorded by Caviar.

12 mm. “Settlement” means the settlement of the Action between and among the
 13 Named Claimants, the Settlement Class Members, and Caviar, as set forth in this Settlement
 14 Agreement.

15 nn. “Settlement Administrator” means Garden City Group, the neutral, third-
 16 party settlement administrator to be appointed by the Arbitrator.

17 oo. “Settlement Amount” means one million, eight hundred seventy-five
 18 thousand, nine hundred and thirty-five dollars (\$1,875,935).

19 pp. “Settlement Class” means all Couriers who delivered at least one Order
 20 during the Settlement Class Period. Excluded from the Settlement Class are Class Counsel and
 21 their employees and immediate family members and the Arbitrator and staff assigned to the
 22 Action and their immediate family members.

23 qq. “Settlement Class Member” means any member of the Settlement Class.

24 rr. “Settlement Class Period” means the period from May 1, 2012 through the
 25 Preliminary Approval Date.

26 ss. “Settlement Fund” means the Settlement Amount.

27 tt. “Settlement Payment” means the payment to a Settlement Class Member
 28 calculated pursuant to the Plan of Allocation.

III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR PRELIMINARY AND FINAL APPROVAL

23. The Named Claimants have submitted to the Arbitrator the Amended Demand for Settlement, a motion for preliminary approval of the Settlement and a joint motion for approval of this revised Settlement Agreement. The joint motion for approval included a proposed plan for the sending of the Notice of Settlement of Class Action to Settlement Class Members by May 25, 2017, and provided that, by July 13, 2017, any Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to the proposed Settlement, or (iii) object to Class Counsel's request for attorneys' fees and costs and for enhancement payments to the Named Claimants (the Exclusion/Objection Deadline). The motion for preliminary approval also requested that any hearing on final approval of the Settlement and any determination on the request for attorneys' fees, costs, and enhancement payments (the "Fairness Hearing") be set for after the Exclusion/Objection Deadline.

24. In connection with execution of this Settlement Agreement, the Named Claimants agree to the following:

a. In the event that the Ninth Circuit inquires about counsel's availability for argument in *Levin v. Caviar*, No. 16-15975 (9th Cir.), or schedules argument in that matter, the parties shall notify the Ninth Circuit of this Settlement Agreement and request that no argument be scheduled in *Levin v. Caviar* pending Final Approval. Within seven (7) days of Final Approval, Claimant Levin shall dismiss his appeal in *Levin v. Caviar* with prejudice.

b. The Parties have entered into a stipulation to stay the deadline for Caviar to respond to the Complaint in *Rosen and Brewster v. Caviar*, No. CGC-16-555225, currently pending in the California Superior Court in and for the County of San Francisco, until after Final Approval. Within seven (7) days of Final Approval, Claimants Rosen and Brewster shall dismiss *Rosen and Brewster v. Caviar*, No. CGC-16-555225, with prejudice.

25. The Parties stipulate to certification under the applicable JAMS rules, for settlement purposes only, of the Settlement Class, excluding the Settlement Class's PAGA Claims. Each Party agrees that this stipulation shall not be used by any Person for any purpose

1 whatsoever in any legal proceeding, including but not limited to arbitrations, other than a
2 proceeding to enforce the terms of the Agreement, as further set forth in this Agreement.

3 26. The Parties and their counsel shall use their best efforts to obtain a Final Approval
4 Order approving the Settlement from the Arbitrator, and shall use their best efforts to have that
5 Final Approval order entered as a Judgment by the Court.

6 27. The Parties agree to submit to the Arbitrator for his consideration this Settlement
7 Agreement, including all Exhibits.

8 28. Solely for purposes of implementing this Agreement and effectuating the proposed
9 Settlement, the Parties agree and stipulate that:

10 a. Named Claimants sought and obtained the Arbitrator's permission to enter
11 the Amended Demand for Settlement, without material variation from Exhibit C, and Caviar
12 consented to such amendment pursuant to applicable JAMS Rules. The Amended Demand for
13 Settlement was submitted concurrently with the submission of the motion for preliminary
14 approval of the Settlement and was deemed filed as of April 24, 2017. The Arbitrator's approval
15 to file the Amended Demand for Settlement, and the subsequent prompt entry of the Amended
16 Demand for Settlement, are material conditions of this Settlement Agreement. The Parties agree
17 that the filing of the Amended Demand for Settlement will streamline the settlement process and
18 ensure that more money can be paid to Settlement Class Members by saving the costs of multiple
19 notice and approval processes. The Parties further agree and stipulate that Caviar may seek an
20 order from the Arbitrator that the allegations in the Amended Demand for Settlement are deemed
21 controverted by the answer previously filed by Caviar in response to the currently operative
22 demand, such that no further responsive pleading from Caviar is required. If for any reason the
23 Settlement does not become Final or the Effective Date does not occur, the Amended Demand for
24 Settlement shall be stricken from the record and the operative demand shall revert to the filed
25 demand (filed on behalf of Claimant McKean only) that preceded the Amended Demand for
26 Settlement.

27 b. The Parties will submit to the Arbitrator the Preliminary Approval Order
28 attached hereto as Exhibit A. Among other things, the Preliminary Approval Order will grant

1 leave to preliminarily certify the Settlement Class for settlement purposes only; approve the
 2 Named Claimants as class representatives, appoint Class Counsel to represent the Settlement
 3 Class, and appoint the Settlement Administrator; approve the Notice of Settlement of Class
 4 Action, and the class notice plan embodied in the Settlement Agreement, and approve them as
 5 consistent with the JAMS Class Action Procedures and due process; set out the requirements for
 6 objecting to the Settlement, excluding Settlement Class Members from the Settlement Class, all
 7 as provided in this Agreement; provide that certification and all actions associated with
 8 certification are undertaken on the condition that the certification and other actions shall be
 9 automatically vacated if this Agreement is terminated, as provided in this Agreement;
 10 preliminarily enjoin all Settlement Class Members and their Legally Authorized Representatives,
 11 unless and until they submit a timely request for exclusion pursuant to the Settlement Agreement,
 12 from filing or otherwise participating in any other suit or arbitration based on the Class Members'
 13 Released Claims, or from attempting to effect an opt-out of a group, class, or subclass of
 14 individuals; and scheduled the Fairness Hearing for July 28, 2017.

15 29. At the Fairness Hearing, the Named Claimants shall request entry of a Final
 16 Approval Order, to be agreed upon by the Parties, the entry of which is a material condition of
 17 this Settlement Agreement, and that, among other things:

18 a. finally approves the Settlement as fair, reasonable, and adequate, within the
 19 meaning of JAMS Class Action Procedures, Rule 6(a)(2), and directs its consummation pursuant
 20 to the terms of the Settlement Agreement;

21 b. finds that Class Counsel and the Named Claimants adequately represented
 22 the Settlement Class for the purpose of entering into and implementing the Agreement;

23 c. re-confirms the appointment of the Settlement Administrator and finds that
 24 the Settlement Administrator has fulfilled its duties under the Settlement;

25 d. finds that the Class Notice (i) constituted the best practicable notice;
 26 (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise
 27 Settlement Class Members of the pendency of the Action, and their right to exclude themselves
 28 from or object to the proposed settlement and to appear at the Fairness Hearing; (iii) was

1 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive
2 notice; and (iv) met all applicable requirements of the JAMS Class Action Procedures, due
3 process, and any other applicable rules or law;

4 e. approves the Opt-Out List and determines that the Opt-Out List is a
5 complete list of all Settlement Class Members who have timely requested exclusion from the
6 Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval
7 Order (except with respect to their PAGA claims);

8 f. dismisses the Action on the merits and with prejudice, and without fees or
9 costs except as provided in this Agreement;

10 g. directs that the Final Approval Order of dismissal shall be final and entered
11 forthwith;

12 h. without affecting the finality of the Final Approval Order, reserves
13 jurisdiction over the Named Claimants, the Settlement Class, and Caviar as to all matters
14 concerning the administration, consummation, and enforcement of this Settlement Agreement;

15 i. adjudges that, as of the Effective Date, the Named Claimants, and all
16 Settlement Class Members who have not been excluded from the Settlement Class as provided in
17 the Opt-Out List approved by the Court, and their heirs, estates, trustees, executors,
18 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or
19 anyone claiming through them or acting or purporting to act for them or on their behalf,
20 regardless of whether they have received actual notice of the proposed Settlement, have
21 conclusively compromised, settled, discharged, and released Named Claimants' General Released
22 Claims (in the case of the Named Claimants) and Class Members' Released Claims (in the case of
23 the Settlement Class Members) against Caviar and the Released Parties, and are bound by the
24 provisions of this Agreement;

25 j. declares this Agreement and the Final Approval Order to be binding on,
26 and have res judicata and preclusive effect in, all pending and future lawsuits and/or arbitration or
27 other proceedings: (i) that encompass the Named Claimants' General Released Claims and that
28 are maintained by or on behalf of the Named Claimants and/or their heirs, estates, trustees,

1 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and
2 successors, and/or anyone claiming through them or acting or purporting to act for them or on
3 their behalf, and (ii) that encompass the Class Members' Released Claims and that are maintained
4 by or on behalf of any Settlement Class Member who has not been excluded from the Settlement
5 Class as provided in the Opt-Out List approved by the Arbitrator and/or his or her heirs, estates,
6 trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and
7 successors, and/or anyone claiming through them or acting or purporting to act for them or on
8 their behalf, regardless of whether the Settlement Class Member previously initiated or
9 subsequently initiates individual litigation or other proceedings encompassed by the Class
10 Members' Released Claims, and even if such Settlement Class Member never received actual
11 notice of the Action or this proposed Settlement;

12 k. permanently bars and enjoins the Named Claimants, and all other
13 Settlement Class Members who have not been excluded from the Settlement Class as provided in
14 the Opt-Out List approved by the Court, from (i) filing, commencing, prosecuting, intervening in,
15 or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory,
16 arbitration, or other proceeding in any jurisdiction based on the Named Claimants' General
17 Released Claims (in the case of the Named Claimants) and the Class Members' Released Claims
18 (in the case of the Settlement Class Members) and (ii) organizing Settlement Class Members into
19 a separate group, class, or subclass for purposes of pursuing as a purported class action any
20 lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to
21 amend a pending complaint to include class allegations, or seeking class certification in a pending
22 action) based on the Class Members' Released Claims; determines that the Agreement and the
23 Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should
24 not in any event be offered, received, or construed as evidence of, a presumption, concession, or
25 an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of
26 a litigation or arbitration class, or of any misrepresentation or omission in any statement or
27 written document approved or made by any Party; provided, however, that reference may be
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made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;

l. orders that the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the Arbitrator or the Court, or any appellate court and/or other court of review, or if Caviar invokes the right to withdraw from the settlement as provided in Paragraphs 90–91 in which event the Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability of a litigation class, as further provided in Paragraphs 93–94;

m. authorizes the Parties, without further approval from the Arbitrator, to agree to and adopt such amendments, modifications, and expansions of this Agreement, including all Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval Order and (ii) do not limit the rights of Settlement Class Members; and

n. contains such other and further provisions consistent with the terms of this Settlement Agreement to which the Parties expressly consent in writing.

30. At the Fairness Hearing and as a part of the final approval of this Settlement, Class Counsel will also request approval of the Plan of Allocation set forth in Section V. Any modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on Caviar to increase the consideration paid in connection with the Settlement.

31. At the Fairness Hearing, Class Counsel may also request entry of an Order approving Class Counsel's application for an award of attorneys' fees and expenses and for enhancement payments to the Named Claimants. Any such Fee and Expense Award or Enhancement Payment shall be paid exclusively from the Settlement Fund. In no event shall

Caviar otherwise be obligated to pay for any attorneys' fees and expenses or enhancement payments. The disposition of Class Counsel's application for a Fee and Expense Award, and for Enhancement Payments, is within the sound discretion of the Arbitrator and is not a material term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that such application be granted. Any disapproval or modification of such application by the Arbitrator shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on Caviar to increase the consideration paid in connection with the Settlement.

32. Within 15 days after the Arbitrator enters the Final Approval Order, the Parties shall jointly file a petition with the Court for confirmation of the arbitration award in the form of the Final Approval Order, as well as a corresponding Judgment.

IV. SETTLEMENT CONSIDERATION

33. The Settlement includes both monetary and non-monetary components, as set forth in detail below.

34. The total monetary component of the Settlement from Caviar is the Settlement Amount (\$1,875,935). This is an "all in" number that includes, without limitation, all monetary benefits and payments to the Settlement Class, Enhancement Payments, Fee and Expense Award, escrow fees, Taxes and Tax Expenses (as defined below), PAGA Payment, and all other costs and expenses relating to the Settlement (including, but not limited to, administration costs and expenses, notice costs and expenses, and settlement costs and expenses). Under no circumstances shall Caviar be required to pay anything more than the Settlement Amount. In no event shall Caviar be liable for making any payments under this Settlement, or for providing any relief to Settlement Class Members, before the deadlines set forth in this Agreement.

35. Caviar shall pay this monetary component of the Settlement into the Escrow Account, for the benefit of the Settlement Class, as follows: (i) within twenty-one (21) days of the Preliminary Approval Date, Caviar shall pay into the Escrow Account one hundred thousand dollars (\$100,000) to be used by the Settlement Administrator at the direction of Class Counsel for reasonable costs in connection with providing notice of the Settlement to Settlement Class

1 Members and for other administrative expenses (the “Notice and Administration Fund”),
2 according to the terms in Section VI; and (ii) within seven (7) days after the Effective Date,
3 Caviar shall pay into the Escrow Account the remaining amount of the Settlement Amount
4 (\$1,775,935). After the Effective Date, Caviar shall not have any right to the return or reversion
5 of the Settlement Fund, or any portion thereof, except as provided in Section IX.

6 36. Within seven (7) days of Final Approval, Caviar will (1) use an automated
7 dispatch system to assign orders to Couriers, with some exceptions; (2) give Couriers notice and
8 the opportunity to respond to certain alleged breaches of the Terms and Conditions prior to the
9 Couriers’ permanent deactivation from the platform; and (3) give Couriers the opportunity to
10 appeal permanent deactivation arising out of certain breaches of the Terms and Conditions that, in
11 Caviar’s judgment, require immediate deactivation.

12 37. All Taxes arising with respect to the income, if any, earned by the Settlement Fund
13 (including any Taxes that may be imposed upon Caviar with respect to any income earned by the
14 Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified
15 settlement fund” for federal or state income tax purposes), and any expenses and costs incurred in
16 connection with the payment of Taxes pursuant to this Paragraph (including, without limitation,
17 expenses of tax attorneys and/or accountants and mailing, administration, and distribution costs
18 and expenses relating to the filing or the failure to file all necessary or advisable tax returns (the
19 “Tax Expenses”)), shall be paid out of the Settlement Fund. Caviar shall not have any liability or
20 responsibility for the Taxes or the Tax Expenses. The Escrow Agent shall timely and properly
21 file all informational and other tax returns necessary or advisable with respect to the Settlement
22 Fund and the distributions and payments therefrom, including, without limitation, the tax returns
23 described in Treas. Reg. § 1.468B–2(k), and to the extent applicable, Treas. Reg. § 1.468B–2(1).
24 Such tax returns shall be consistent with the terms herein, and in all events shall reflect that all
25 Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. The
26 Escrow Agent shall also timely pay Taxes and Tax Expenses out of the Settlement Fund to the
27 extent necessary, and is authorized to withdraw from the Escrow Account amounts necessary to
28 pay Taxes and Tax Expenses. The Parties hereto agree to cooperate with the Escrow Agent, each

1 other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the
2 provisions of this Settlement Agreement. Neither the Parties nor their counsel shall have any
3 responsibility or liability for the acts or omissions of the Escrow Agent.

4 38. The Named Claimants and all Settlement Class Members who receive a payment
5 of any kind from the Settlement Fund (including, in the case of the Named Claimants,
6 Enhancement Payments) expressly acknowledge that such payments shall be considered non-
7 wages for which an IRS Form 1099 will be issued, if required. The Named Claimants and all
8 Settlement Class Members who receive a payment of any kind from the Settlement Fund agree to
9 timely pay in full all of the federal, state, and municipal income taxes owed on such payments.

10 39. The terms of this Agreement relating to the Fee and Expense Award and
11 Enhancement Payments were not negotiated by the Parties before full agreement was reached as
12 to all other material terms of the proposed Settlement, including, but not limited to, any terms
13 relating to the relief to the Settlement Class. Caviar agrees not to oppose a request for an
14 Enhancement Payment for Claimants Levin, Rosen, and Brewster, as awarded by the Arbitrator,
15 up to a maximum of five thousand dollars (\$5,000) each. The Named Claimants and Class
16 Counsel agree not to seek an Enhancement Payment in excess of seven thousand five hundred
17 dollars (\$7,500) for Claimant Levin and five thousand (\$5,000) each for Claimants Rosen and
18 Brewster. Any Enhancement Payments, as awarded by the Arbitrator, shall be payable from the
19 Settlement Fund contained in the Escrow Account, as ordered, fourteen (14) days after the
20 Effective Date.

21 40. Class Counsel agrees not to seek an award of fees and costs from the Arbitrator in
22 excess of six hundred nineteen thousand, fifty-eight dollars and fifty-five cents (\$619,058.55)
23 from the Settlement Fund (not including, but in addition to, costs of administration). Caviar
24 agrees not to oppose a request for attorneys' fees and costs up to six hundred nineteen thousand,
25 fifty-eight dollars and fifty-five cents (\$619,058.55) from the Settlement Fund. Any Fee and
26 Expense Award, as awarded by the Court, shall be payable from the Settlement Fund contained in
27 the Escrow Account, as ordered, fourteen (14) days after the Effective Date.
28

V. PLAN OF ALLOCATION AND DISBURSEMENT OF SETTLEMENT PAYMENTS

41. To receive a payment from the Settlement, a Settlement Class Member or his Legally Authorized Representative must timely submit a Claim Form that satisfies the requirements of Paragraph 42, must not have submitted a request for exclusion, and must be eligible for a payment under the Plan of Allocation in Paragraphs 43-48. Each Settlement Class Member who satisfies these criteria is an Authorized Claimant.

42. A Claim Form is timely if it is postmarked by the Bar Date and mailed to the Settlement Administrator at the address in the Notice of Settlement of Class Action, or if it is submitted online by the Bar Date. The Claim Form must be signed (electronically, if submitted online) under penalty of perjury.

43. Settlement Payments shall be calculated using a points system, in accordance with the following Plan of Allocation.

44. Each Authorized Claimant shall be awarded 1 point for every mile traveled, as can reasonably be determined by Caviar, while delivering Orders using the Caviar platform.

45. For each Authorized Claimant who delivered at least one Order by car or motorcycle, the points calculated according to Paragraph 44 shall be quadrupled (*i.e.*, multiplied by 4).

46. For each Authorized Claimant who traveled 100 or more miles per week in 50 percent or more of the weeks in the Settlement Class Period in which he or she delivered at least one Order, the points calculated according to Paragraph 44 (for Authorized Claimants who did not deliver any Order by car or motorcycle) or Paragraph 45 (for Authorized Claimants who delivered at least one Order by car or motorcycle) shall be doubled (*i.e.*, multiplied by 2).

47. For each Authorized Claimant who delivered at least one Order in California, the points calculated according to Paragraph 44 (for Authorized Claimants who did not deliver any Order by car or motorcycle) or Paragraph 45 (for Authorized Claimants who delivered at least one Order by car or motorcycle) shall be doubled (*i.e.*, multiplied by 2). Thus, for those Authorized Claimants who delivered at least one Order in California by car or motorcycle and who traveled 100 or more miles per week in 50 percent or more of the weeks in the Settlement

1 Class Period in which he or she delivered at least one Order, their points shall be multiplied by
2 16.

3 48. The Settlement Administrator shall calculate the number of points to which each
4 Authorized Claimant is entitled. The determination of each Authorized Claimant's number of
5 miles traveled shall be based on the relevant records that Caviar is able to identify following a
6 good-faith inquiry, and Caviar shall make a diligent effort to supply the records to the Settlement
7 Administrator in a standard electronic format.

8 49. Following the award of points to all Authorized Claimants, each Authorized
9 Claimant's points shall be divided by the sum of the points awarded to the Authorized Claimants
10 as a whole, and the resulting fraction shall be multiplied by the Net Settlement Fund. The product
11 of this calculation is the Settlement Payment that each Authorized Claimant shall receive, except
12 that no Class Member who submits a claim will receive less than \$10. However, the Settlement
13 Administrator shall hold back from the initial settlement fund to be distributed an amount that the
14 Administrator, in consultation with Claimants' counsel, believes should be sufficient to provide
15 payments to additional Class Members who may submit claims following the initial distribution
16 of funds and prior to the Bar Date.

17 50. The Settlement Administrator shall use reasonable efforts to disburse Settlement
18 Payments to all Authorized Claimants within forty-five (45) days after the Effective Date, but in
19 no event before twenty-one (21) days after the Effective Date. Such disbursements shall be made
20 by direct payment via electronic funds transfer if possible or by check via first-class mail if
21 necessary. The Settlement Administrator shall confer with Class Counsel and with Caviar to
22 determine which, if any, Authorized Claimants are able to receive direct payment via electronic
23 funds transfer. Subject to and as limited by all applicable legal and contractual obligations,
24 Caviar shall make a diligent effort to supply the Settlement Administrator with the electronic
25 funds transfer information, if any, that the Settlement Administrator requests for Authorized
26 Claimants. For those Settlement Payments for which the Settlement Administrator attempts
27 payment by electronic funds transfer but such transfer is unsuccessful, and for those Settlement
28 Payments for which the Settlement Administrator attempts payment by check but such check is

1 returned as undeliverable, the Settlement Administrator shall make a diligent effort to obtain
2 updated electronic payment information or mailing addresses and attempt a second disbursement
3 if the Settlement Payment is likely to be greater than fifty dollars (\$50). For any payments that
4 are not successfully distributed to Class Members, after such reasonable efforts have been made
5 to distribute the payments, those funds will return to the settlement fund to be distributed in the
6 final distribution.

7 51. Following the initial distribution of settlement funds, the Administrator shall send
8 a reminder notice to all Class Members who have not submitted claims to participate in the
9 settlement whose estimated shares would be greater than \$100. The reminder notice will inform
10 these Class Members that they have an additional 60 days to submit claim forms. At the
11 expiration of those 60 days, the Administrator shall distribute settlement payments to those class
12 members who have submitted claims by that date but have not yet received settlement payments,
13 calculated in the same manner as provided in Paragraphs 43-48.

14 52. Following the calculation of the distribution described in Paragraph 50, if there are
15 any further funds remaining in the Net Settlement Fund, those funds shall be distributed to Class
16 Members who have submitted claims, in proportion to the amounts of their initial payments, but
17 only for those whose residual shares would be at least \$50.

18 53. If any settlement funds are remaining after the distributions described in
19 Paragraphs 50 and 51 (i.e. if there are payments for which the Settlement Administrator was not
20 able to effectuate payment to claiming Class Members, despite reasonable attempts to do so),
21 those funds will be distributed on a *cy pres* basis to Legal Aid at Work.

22 54. The Settlement Administrator shall send with each Settlement Payment
23 disbursement an explanation (in a concurrent electronic mail message for an electronic funds
24 transfer and in an enclosed letter for a check) of how the Authorized Claimant's Settlement
25 Payment was calculated and how the Authorized Claimant may challenge that calculation (as set
26 forth in Paragraph 55). At the same time, the Settlement Administrator shall send a letter, via
27 electronic mail if possible and via first-class mail if necessary, to each claimant who is not an
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1 Authorized Claimant explaining that the claimant is not entitled to a payment under this
2 Settlement and that the claimant may challenge that determination (as set forth in Paragraph 55).

3 55. If an Authorized Claimant or Settlement Class Member disagrees with the
4 calculation of his or her Settlement Payment, the records used for such calculation, or the
5 determination that he or she is not an Authorized Claimant, he or she may challenge the
6 calculation, records, or determination. The Authorized Claimant or Settlement Class Member
7 must send the challenge, along with any supporting documentation, to the Settlement
8 Administrator such that it is postmarked no later than sixty (60) days from the date of the initial
9 disbursement of Settlement Payments. The Settlement Administrator shall resolve the challenge
10 based on input from Class Counsel and Caviar, who shall cooperate in good faith to assist the
11 Settlement Administrator. Class Counsel and Caviar acknowledge in this regard that, as provided
12 for by Paragraph 129, they remain subject to the jurisdiction of the Arbitrator for all purposes
13 related to this Settlement Agreement. In the event that the Settlement Administrator resolves the
14 challenge in favor of the Authorized Claimant or Settlement Class Member, the Settlement
15 Administrator shall provide the Authorized Claimant or Settlement Class Member with a
16 disbursement from the unclaimed funds.

17 56. The Parties recognize that the Settlement Payments to be paid to Authorized
18 Claimants reflect settlement of a dispute over the Released Claims. The Parties agree that the
19 Settlement Payments are not, and are not intended to be made as a payment with respect to, a
20 penalty or a punishment of the type or kind contemplated by Internal Revenue Service Code
21 Section 162(f), except that the PAGA Payment is a civil penalty. With the exception of the
22 PAGA Payment, no governmental entity is directly or indirectly a recipient of any portion of the
23 payments made pursuant to this Settlement, and no governmental entity has any interest or
24 involvement of any type or kind in the litigation hereby settled. The payments made herein are
25 not made or received with the intention of avoiding or reducing any liability to a governmental
26 entity of any type or kind.

27 57. As provided in Paragraph 38, Authorized Claimants shall be solely responsible for
28 the timely payment in full of all federal, state, and municipal income taxes owed on Settlement

1 Payments. Neither Party has made any representation to the other Party as to the taxability or tax
2 implications of any Settlement Payments or other payments pursuant to this Agreement.

3 **VI. NOTICE AND ADMINISTRATION FUND AND MAILING OF CLASS NOTICE**

4 58. The Notice and Administration Fund shall be used by the Settlement Administrator
5 to pay the costs of identifying and notifying Settlement Class Members, and, as allowed by the
6 Court, soliciting the filing of Claims, facilitating the claims process, and otherwise administering
7 the Settlement on behalf of the Settlement Class Members. Any notice and administration costs,
8 as well as all applicable Taxes and escrow fees, shall be paid out of the Notice and
9 Administration Fund and, if the Notice and Administration Fund is exhausted, out of the
10 Settlement Fund. Notice and administration costs shall include, among other things, identifying
11 the last-known electronic and/or postal mailing addresses for Settlement Class Members, mailing,
12 printing (if necessary), and publishing notice, as directed by the Court, and the cost of processing
13 Claims and distributing the Net Settlement Fund to Settlement Class Members.

14 59. Caviar will provide the Settlement Administrator the names and last-known
15 electronic and postal mail addresses of potential Settlement Class Members that it is able to
16 identify following a good-faith inquiry. Caviar will provide the Settlement Administrator and
17 Class Counsel with Class Members' names and the information from which Class Members'
18 Points will be calculated. Class Counsel will be permitted to review and approve the calculation
19 of settlement funds to be distributed.

20 60. To the extent that sending the Notice of Settlement of Class Action via postal mail
21 is necessary under the terms of Paragraph 62, before any mailing, the Settlement Administrator
22 shall make a good-faith attempt to obtain the most-current names and postal mail addresses for all
23 potential Settlement Class Members to receive such postal mail, including cross-checking the
24 names and/or postal mail addresses it received from Caviar, as well as any other sources, with
25 appropriate databases (*e.g.*, the National Change of Address Database) and performing further
26 reasonable searches (*e.g.*, through Lexis/Nexis) for more-current names and/or postal mail
27 addresses for potential Settlement Class Members. All potential Settlement Class Members'
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1 names and postal mail addresses obtained through these sources shall be protected as confidential
2 and not used for purposes other than the notice and administration of this Settlement.

3 61. The Settlement Administrator shall send a copy of the Notice of Settlement of
4 Class Action by electronic mail to each potential Settlement Class Member, as well as to Class
5 Counsel and to counsel for Caviar.

6 62. If any Notice of Settlement of Class Action sent via electronic mail to any
7 potential Settlement Class Member in accordance with Paragraph 61 is undeliverable, the
8 Settlement Administrator will promptly log each such Notice of Settlement of Class Action and
9 provide copies of the log to Class Counsel and counsel for Caviar, as requested. The Settlement
10 Administrator shall then send the Notice of Settlement of Class Action to the potential Settlement
11 Class Member's postal mailing address on file via first-class mail. If any Notice of Settlement of
12 Class Action sent to any potential Settlement Class Member via first-class mail is returned to the
13 Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each
14 such Notice of Settlement of Class Action and provide copies of the log to Class Counsel and
15 counsel for Caviar, as requested. If the postal mailing is returned with a forwarding address, the
16 Settlement Administrator shall forward the postal mailing to that address. For any remaining
17 returned postal mailings, the Settlement Administrator shall made a good-faith search of an
18 appropriate database, and postal mailings shall be forwarded to any new postal mail address
19 obtained through such a search. In the event that any Notice of Settlement of Class Action is
20 returned as undeliverable a second time, no further postal mailing shall be required.

21 63. The Parties agree that the procedures set forth in this Section constitute reasonable
22 and the best practicable notice under the circumstances and an appropriate and sufficient effort to
23 locate current addresses for Settlement Class Members such that no additional efforts to do so
24 shall be required.

25 64. The Settlement Administrator will provide Class Notice by, at a minimum,
26 (i) electronic mail notice without material variation from the form attached as Exhibit B; (ii) if
27 necessary in accordance with Paragraph 62, first-class mail (where available) notice without
28 material variation from the form attached as Exhibit B; and (iii) a hyperlink to a website managed

1 by the Settlement Administrator and accessible by class members, and approved by counsel for
2 the Parties, which will contain the Class Notice, a copy of this Settlement Agreement, and other
3 relevant pleadings. The Class Notice shall comply with the JAMS Class Action Procedures and
4 due process.

5 65. The Class Notice shall inform potential Settlement Class Members that Settlement
6 Payments will be made by direct payment via electronic funds transfer if possible or by check via
7 first-class mail if necessary and possible. If the Settlement Administrator, in consultation with
8 Caviar, determines that it is feasible to receive updated electronic funds transfer from potential
9 Settlement Class Members who do not have current electronic funds transfer information on file
10 with Caviar, the Settlement Administrator shall provide an opportunity for potential Settlement
11 Class Members to submit such updated information, or to request payment by paper check if they
12 prefer. The Settlement Administrator shall provide an opportunity for potential Settlement Class
13 Members to submit updated postal mailing addresses.

14 66. Thirty (30) days before the Bar Date or at such other time or times as the
15 Settlement Administrator deems appropriate, the Settlement Administrator shall distribute by
16 electronic mail a neutral notice reminding Settlement Class Members who have not submitted a
17 Claim Form of the need to do so in order to receive a Settlement Payment. The Settlement
18 Administrator shall make additional reasonable efforts (in consultation with Class Counsel) to
19 locate and remind Settlement Class Members who have not submitted a Claim Form and whose
20 Settlement Payment would likely be at least one hundred dollars (\$100) of the need to submit a
21 Claim Form in order to receive a Settlement Payment. Such reasonable efforts may include, but
22 are not limited to, attempting to contact such Settlement Class Members by postal mail in
23 addition to electronic mail.

24 67. The Parties agree to notify each other and the Settlement Administrator of the
25 receipt of any request for exclusion or objection to this Settlement within five (5) business days of
26 receipt.
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1 68. As of the Effective Date, any balance, including interest if any, remaining in the
2 Notice and Administration Fund, less expenses incurred but not yet paid, shall be deposited into
3 the Settlement Fund.

4 69. If the Settlement is not approved, is overturned, or is modified on appeal or as a
5 result of further proceedings on remand of any appeal with respect to the Settlement, or if the
6 Effective Date otherwise does not occur, the balance of the Notice and Administration Fund
7 which has not been expended pursuant to this Agreement, and the balance of the Settlement Fund,
8 including all earned or accrued interest, shall be returned to Caviar within five (5) days, or as
9 soon as practicable, as set forth in this Agreement and in accordance with the Escrow Agreement.

10 70. If any individual whose name does not appear on the list of potential Settlement
11 Class Members that Caviar provides the Settlement Administrator pursuant to Paragraph 59 (and
12 who has not previously opted out of the Settlement Class), believes that he or she is a Settlement
13 Class Member, he or she shall have the opportunity to dispute his or her exclusion from the
14 Settlement Class. If an individual believes he or she is a Settlement Class Member, he or she
15 must notify the Settlement Administrator within a reasonable amount of time after the first
16 mailing of the Notice of Settlement of Class Action. The Parties will meet and confer regarding
17 any such individuals in an attempt to reach an agreement as to whether any such individual
18 should be regarded as a Settlement Class Member. If the Parties so agree, the Settlement
19 Administrator will mail a Notice of Settlement of Class Action and Claim Form to the individual,
20 and treat the individual as a Settlement Class Member for all other purposes. Such an individual
21 will have all of the same rights as any other Settlement Class Member under this Agreement. In
22 the event that the initial disbursement of Settlement Payments has begun (in accordance with this
23 Settlement Agreement) at the time that the Parties agree that such individual should be regarded
24 as a Settlement Class Member and that such individual submits a valid Claim Form, the
25 Settlement Payment to such individual shall be disbursed from the settlement fund.
26
27
28

VII. RELEASES

71. The Released Claims against each and all of the Released Parties shall be released and dismissed with prejudice and on the merits (without an award of costs to any party other than as provided in this Agreement) upon entry of the Final Approval Order and Judgment.

72. As of the Effective Date, the Named Claimants, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not to sue each and all of the Released Parties from each and all of the Named Claimants' General Released Claims (in the case of the Named Claimants) and the Class Members' Released Claims (in the case of the Settlement Class Members), and by operation of the Judgment shall have fully and finally released, relinquished, and discharged all such claims against each and all of the Released Parties; and they further agree that they shall not now or hereafter initiate, maintain, or assert any Named Claimants' General Released Claims (in the case of the Named Claimants) and any Class Members' Released Claims (in the case of the Settlement Class Members) against the Released Parties in any other court action or before any administrative body, tribunal, arbitration panel or single arbitrator, or other adjudicating body. Without in any way limiting the scope of the release described in Paragraphs 22(i) and 22(y) or in the remainder of this Section, this release covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing the Named Claimants or Settlement Class Members, or by the Named Claimants or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

73. As of the Effective Date, the Named Claimants, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal or any arbitral forum any and all Named

1 Claimants' General Released Claims (in the case of the Named Claimants) and any Class
2 Members' Released Claims (in the case of the Settlement Class Members), as further provided in
3 Paragraph 29(k).

4 74. The Named Claimants and the Settlement Class Members expressly acknowledge
5 that they are familiar with principles of law such as Section 1542 of the California Civil Code,
6 which provides:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
8 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
9 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
10 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
11 **OR HER SETTLEMENT WITH THE DEBTOR.**

12 75. With respect to the Class Members' Released Claims, as described in Paragraph
13 22(i), each Settlement Class Member shall be deemed to have expressly, knowingly, and
14 voluntarily waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
15 and benefits he or she may otherwise have had pursuant to Section 1542 of the California Civil
16 Code and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction
17 that may be applicable herein. In connection with the release, the Settlement Class Members
18 acknowledge that they are aware that they may hereafter discover claims presently unknown and
19 unsuspected or facts in addition to or different from those which they now know or believe to be
20 true with respect to matters released herein. Nevertheless, the Settlement Class Members
21 acknowledge that a portion of the consideration received herein is for a release with respect to
22 unknown damages and complaints, whether resulting from known injuries and consequences or
23 from unknown injuries or unknown consequences of known or unknown injuries, and state that it
24 is the intention of the Settlement Class Members in agreeing to this release fully, finally, and
25 forever to settle and release all matters and all claims that exist, hereafter may exist, or might
26 have existed (whether or not previously or currently asserted in any action), constituting Class
27 Members' Released Claims.

28 76. With respect to the Named Claimants' General Released Claims, as described in
Paragraph 22(y), each Named Claimant shall be deemed to have expressly, knowingly, and
voluntarily waived and relinquished, to the fullest extent permitted by law, the provisions, rights,

1 and benefits he or she may otherwise have had pursuant to Section 1542 of the California Civil
 2 Code and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction
 3 that may be applicable herein. In connection with the release, the Named Claimants acknowledge
 4 that they are aware that they may hereafter discover claims presently unknown and unsuspected
 5 or facts in addition to or different from those which they now know or believe to be true with
 6 respect to matters released herein. Nevertheless, the Named Claimants acknowledge that a
 7 portion of the consideration received herein is for a release with respect to unknown damages and
 8 complaints, whether resulting from known injuries and consequences or from unknown injuries or
 9 unknown consequences of known or unknown injuries, and state that it is the intention of the
 10 Named Claimants in agreeing to this release fully, finally, and forever to settle and release all
 11 matters and all claims that exist, hereafter may exist, or might have existed (whether or not
 12 previously or currently asserted in any action), constituting Named Claimants' General Released
 13 Claims.

14 77. Each Named Claimant further acknowledges, agrees, and understands that: (i) he
 15 or she has read and understands the terms of this Agreement; (ii) he or she has been advised in
 16 writing to consult with an attorney before executing this Agreement; (iii) he or she has obtained
 17 and considered such legal counsel as he deems necessary; (iv) he or she has been given twenty-
 18 one (21) days to consider whether or not to enter into this Agreement (although he or she may
 19 elect not to use the full 21 day period at his option);

20 78. Each Named Claimant further acknowledges, agrees, and understands that he or
 21 she is expressly, knowingly, and voluntarily waiving and relinquishing, to the fullest extent
 22 permitted by law, all rights or claims arising under the Age Discrimination in Employment Act of
 23 1967. Each Named Claimant may revoke his or her acceptance of the Enhancement Payment in
 24 consideration for the Named Claimants' General Released Claims within seven (7) days after the
 25 date he or she signs it. Any revocation must be in writing and received by counsel for Caviar.

26 79. Subject to Arbitrator approval and entry of Judgment by the Court, the Named
 27 Claimant, and all Settlement Class Members who have not been excluded from the Settlement
 28 Class as provided in the Opt-Out List, shall be bound by this Settlement Agreement, and all of

1 their claims shall be dismissed with prejudice and released, even if they never received actual
2 notice of the Action or this Settlement.

3 **VIII. ADMINISTRATION OF THE SETTLEMENT FUND**

4 80. The Settlement Administrator or its authorized agents in consultation with the
5 Parties and subject to the supervision, direction, and approval of the Arbitrator, shall administer
6 and identify Claims submitted by Settlement Class Members, and shall calculate the allocation of
7 and oversee the distribution of the Settlement Fund to Settlement Class Members.

8 81. The Notice and Administration Fund and the Settlement Fund shall be applied as
9 follows:

10 a. to pay all costs and expenses incurred in connection with providing Class
11 Notice to Settlement Class Members and, as allowed by the Court, locating Settlement Class
12 Members' last-known postal mail addresses, soliciting Claims, assisting with the filing of Claims,
13 processing Claim Forms and any objections, challenges, and requests for exclusion, administering
14 and distributing the Settlement Fund to the Settlement Class, and escrow fees and costs, in
15 accordance with the terms provided for the Notice and Administration Fund in Section VI;

16 b. subject to the approval and further order(s) of the Arbitrator, and according
17 to the terms provided in Paragraph 39, to pay to Claimants Levin, Rosen, and Brewster
18 Enhancement Payments based on contributions and time expended assisting in the litigation, in
19 the amount ordered by the Arbitrator in the Final Approval Order;

20 c. subject to the approval and further order(s) of the Arbitrator, and according
21 to the terms of Paragraph 40, to pay the Fee and Expense Award as ordered by the Arbitrator;

22 d. to pay Taxes and Tax Expenses owed by the Settlement Fund, according to
23 the terms in Paragraph 37;

24 e. to pay any costs and expenses incurred in connection with the services
25 provided by the Escrow Agent;

26 f. after the Effective Date and subject to the approval and further order(s) of
27 the Arbitrator and/or the Court, to distribute the balance of the Net Settlement Fund for the
28 benefit of the Settlement Class pursuant to the Plan of Allocation, or as otherwise ordered by the

1 Arbitrator and/or the Court, provided that no funds from the Net Settlement Fund shall be
2 disbursed until after the Effective Date; and

3 g. if necessary, to make further distributions according to the terms of
4 Paragraph 82.

5 82. One hundred eighty (180) days after the distribution of the balance of the Net
6 Settlement Fund for the benefit of the Settlement Class, should any amount remain in the Net
7 Settlement Fund or the Notice and Administration Fund, the Settlement Administrator shall make
8 a further distribution of such amounts pursuant to the Plan of Allocation to those Settlement Class
9 Members who received an initial Settlement Payment and whose residual share would likely be at
10 least fifty dollars (\$50). If any funds are not successfully disbursed through this further
11 distribution (for example, if checks are not cashed or returned as undeliverable), the Settlement
12 Administrator shall direct such unclaimed funds to Legal Aid at Work (formerly known as Legal
13 Aid Society – Employment Law Center), which the parties agree has a direct and substantial
14 nexus to the interests of the Settlement Class, and thus provides for a “next best distribution” to
15 the Settlement Class.

16 83. Settlement Class Members who are not on the Opt-Out List approved by the
17 Arbitrator shall be subject to and bound by the provisions of the Settlement Agreement, the
18 releases contained herein, and the Judgment with respect to all Class Members’ Released Claims,
19 regardless of whether they seek or obtain any distribution from the Settlement Fund.

20 84. Caviar shall bear no responsibility for the costs, fees, or expenses related to the
21 administration and distribution of the Settlement Fund. Neither Caviar nor its counsel shall have
22 any responsibility for, interest in, or liability whatsoever with respect to any solicitation, receipt,
23 or processing of Claims, the Settlement Fund, any Plan of Allocation, the calculations or
24 disbursement of Settlement Payments, the payment or withholding of Taxes, the distribution of
25 the Net Settlement Fund, or any losses incurred in connection with any such matters.

26 85. The Settlement Administrator shall be responsible for issuing copies of IRS Form
27 1099 for the Named Claimants and for all Settlement Class Members who receive a payment of
28

any kind from the Settlement Fund (including, in the case of the Named Claimants, Enhancement Payments) and for whom such form is required.

86. Neither Caviar nor Named Claimants nor their counsel shall have any liability concerning the appointment of the Settlement Administrator and any actions taken by it.

87. Payment from the Settlement Fund and Net Settlement Fund made pursuant to and in the manner set forth herein shall be deemed conclusive of compliance with this Settlement Agreement as to all Settlement Class Members.

88. No Settlement Class Member shall have any claim against the Named Claimants, Class Counsel, or the Settlement Administrator based on distributions made substantially in accordance with this Settlement Agreement and/or orders of the Arbitrator and/or the Court. No Settlement Class Member shall have any claim against Caviar or its counsel relating to distributions made under this Settlement.

IX. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF SETTLEMENT AGREEMENT

89. If the Arbitrator does not approve the Settlement as set forth in this Settlement Agreement (*i.e.*, by not entering an award in the form of the Final Approval Order that will be agreed upon by the Parties), or if the Court does not enter Judgment confirming the Final Approval Order, or if the Court enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final Approval Order does not otherwise become Final, then this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their sole discretion within thirty (30) days from the date of such ruling, provide written notice to all other Parties hereto of their intent to proceed with the Settlement under the terms of the Judgment as it may be modified by the Arbitrator, the Court, or any appellate court.

90. Caviar shall have the right to withdraw from the Settlement if the Amended Demand for Settlement does not become the operative demand in the Action promptly after Preliminary Approval. If Caviar chooses, pursuant to its sole and absolute discretion, to exercise this right, it must do so within thirty (30) days of the Preliminary Approval Date, by providing written notice to Class Counsel.

1 91. Caviar shall have the right to withdraw from the Settlement if the number of
2 Settlement Class Members who attempt to exclude themselves from the Settlement Class equals
3 or exceeds twenty-five (25) potential Settlement Class Members. If Caviar chooses, pursuant to
4 its sole and absolute discretion, to exercise this right, it must do so within ten (10) days of receipt
5 of the Settlement Administrator's opt-out list as provided in Paragraph 103, by providing written
6 notice to Class Counsel.

7 92. In the event that (i) the Settlement is not approved, is overturned, or is materially
8 modified by the Arbitrator, the Court or on appeal, (ii) the Judgment does not become Final, or
9 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective for any
10 reason, then within five (5) business days after written notice is sent by Class Counsel or counsel
11 for Caviar to all Parties hereto, the Notice and Administration Fund, less any funds paid or
12 expenses incurred but not yet paid, the Settlement Fund, and any other cash deposited by Caviar
13 into the Escrow Account pursuant to this Agreement shall be refunded to Caviar, including
14 interest earned or accrued.

15 93. In the event that: (i) the Settlement is not approved, is overturned, or is materially
16 modified by the Arbitrator, the Court, or on appeal, (ii) the Judgment does not become Final, or
17 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective for any
18 reason, then: (a) the Settlement shall be without force and effect upon the rights of the Parties
19 hereto, and none of its terms shall be effective or enforceable, with the exception of this
20 Paragraph, which shall remain effective and enforceable; (b) the Parties shall be deemed to have
21 reverted *nunc pro tunc* to their respective status as of February 1, 2017, including with respect to
22 any Court- or Arbitrator-imposed deadlines; (c) Caviar shall be refunded the amounts paid
23 pursuant to this Agreement but not yet spent or disbursed; (d) all Orders entered in connection
24 with the Settlement, including the certification of the Settlement Class and the approval for filing
25 of the Amended Demand for Settlement, shall be vacated without prejudice to any Party's
26 position on the issue of class certification, the issue of amending the demand, or any other issue,
27 in this Action or any other action, and the Parties shall be restored to their litigation positions
28 existing on the date of execution of this Agreement; and (e) the Parties shall proceed in all

1 respects as if the Settlement Agreement and related documentation and orders had not been
 2 executed, and without prejudice in any way from the negotiation or fact of the Settlement or the
 3 terms of the Settlement Agreement. The Settlement Agreement, the Settlement, all documents,
 4 orders, and other evidence relating to the Settlement, the fact of their existence, any of their
 5 terms, any press release or other statement or report by the Parties or by others concerning the
 6 Settlement Agreement, the Settlement, their existence, or their terms, any negotiations,
 7 proceedings, acts performed, or documents executed pursuant to or in furtherance of the
 8 Settlement Agreement or the Settlement shall not be offered, received, or construed as evidence
 9 of a presumption, concession, or an admission of liability, of the certifiability of a litigation or
 10 arbitration class, of the ability to bring class claims in arbitration, or of any misrepresentation or
 11 omission in any statement or written document approved or made, or otherwise used by any
 12 Person for any purpose whatsoever, in any trial or arbitration of this Action or any other action or
 13 proceedings.

14 94. Caviar does not agree or consent to certification of the Settlement Class for any
 15 purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement is
 16 terminated pursuant to its terms, or the Effective Date for any reason does not occur, all Orders
 17 certifying the Settlement Class for purposes of effecting this Settlement Agreement, and all
 18 preliminary and/or final findings regarding the Settlement Class certification order, shall be
 19 automatically vacated upon notice to the Arbitrator, the Action shall proceed as though the
 20 Settlement Class had never been certified pursuant to this Settlement Agreement and such
 21 findings had never been made, and the Action shall revert *nunc pro tunc* to the procedural status
 22 quo as of the date and time immediately before the execution of the Settlement Agreement,
 23 including reversion to the previously operative demand for arbitration in this Action filed only by
 24 Claimant Sean McKean, in accordance with this Settlement Agreement.

25 **X. PROCEDURES FOR REQUESTS FOR EXCLUSION**

26 95. Settlement Class Members (with the exception of the Named Claimants) may opt-
 27 out of the Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement
 28 Class must submit timely, written requests for exclusion. To be effective, such a request must

1 include the Settlement Class Member's name, address, and telephone number; a clear and
 2 unequivocal statement that the Settlement Class Member wishes to be excluded from the
 3 Settlement Class; and the signature of the Settlement Class Member or the Legally Authorized
 4 Representative of the Settlement Class Member. The request must be mailed to the Settlement
 5 Administrator at the address provided in the Notice of Settlement of Class Action and must be
 6 postmarked no later than the Exclusion/Objection Deadline. The date of the postmark shall be the
 7 exclusive means used to determine whether a request for exclusion has been timely submitted.
 8 Requests for exclusion must be exercised individually by the Settlement Class Member, not as or
 9 on behalf of a group, class, or subclass, except that such individual exclusion requests may be
 10 submitted by a Settlement Class Member's Legally Authorized Representative.

11 96. The Settlement Administrator shall promptly log each request for exclusion that it
 12 receives and provide copies of the log and all such requests for exclusion to Class Counsel and
 13 counsel for Caviar, as requested.

14 97. The Settlement Administrator shall prepare a list of all Persons who timely and
 15 properly requested exclusion from the Settlement Class and shall, before the Fairness Hearing,
 16 submit an affidavit to the Arbitrator attesting to the accuracy of the list.

17 98. All Settlement Class Members who are not included in the Opt-Out List approved
 18 by the Arbitrator shall be bound by this Agreement, and all their claims shall be dismissed with
 19 prejudice and released as provided for herein, even if they never received actual notice of the
 20 Action or this proposed Settlement.

21 99. The Settlement Administrator, in its sole discretion, shall determine whether a
 22 request for exclusion was timely submitted. The Settlement Administrator's decision shall be
 23 final, binding, and nonappealable.

24 100. The Named Claimants (other than Sean McKean) agree not to request exclusion
 25 from the Settlement Class.

26 101. Settlement Class Members may object to or opt out of the Settlement, but may not
 27 do both. Any Settlement Class Member who submits a timely request for exclusion may not file
 28

1 an objection to the Settlement, submit a Claim, or receive a Settlement Payment, and shall be
 2 deemed to have waived any rights or benefits under the Settlement Agreement.

3 102. Notwithstanding the submission of a timely request for exclusion, Class Members
 4 will still be bound by the settlement and release of the PAGA Claims or remedies under the Final
 5 Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do
 6 not apply to the PAGA Claims.

7 103. No later than ten (10) business days after the Exclusion/Objection Deadline, the
 8 Settlement Administrator shall provide to Class Counsel and counsel for Caviar a complete opt-
 9 out list together with copies of the opt-out requests. Notwithstanding any other provision of this
 10 Settlement Agreement, if more than twenty five (25) Settlement Class Members opt out of the
 11 Settlement, Caviar at its sole and exclusive option may elect to rescind and revoke the entire
 12 Settlement Agreement, thereby rendering the Settlement null and void in its entirety, by sending
 13 written notice that it revokes the Settlement pursuant to this Paragraph to Class Counsel within
 14 ten (10) business days following receipt of the Settlement Administrator's opt-out list.

15 **XI. PROCEDURES FOR OBJECTIONS**

16 104. Any Settlement Class Member that wishes to object to the fairness,
 17 reasonableness, or adequacy of this Agreement or the proposed Settlement must provide to the
 18 Settlement Administrator (who shall forward it to Class Counsel and Counsel for Caviar), and file
 19 with the Arbitrator, a timely statement of the objection, as set forth below.

20 105. To be timely, the objection must be postmarked and mailed to the Settlement
 21 Administrator, and filed with the Arbitrator, no later than the Exclusion/Objection Deadline. The
 22 date of the postmark on the return-mailing envelope shall be the exclusive means used to
 23 determine whether objection has been timely submitted.

24 106. The objection must contain at least the following: (i) the objector's full name,
 25 address, telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the
 26 specific legal and factual basis for each objection argument; and (iv) a statement whether the
 27 objecting person or entity intends to appear at the Fairness Hearing, either in person or through
 28 counsel and, if through counsel, a statement identifying that counsel by name, bar number,

1 address, and telephone number. All objections shall be signed by the objecting Settlement Class
2 Member (or his Legally Authorized Representative), even if the Settlement Class Member is
3 represented by counsel.

4 107. Any Settlement Class Member (and/or his attorney), or any attorney working for a
5 governmental entity, who wishes to appear in the Action to object to the settlement or who is
6 representing or assisting a Settlement Class Member in connection with any objection to the
7 settlement (including, but not limited to, by drafting or preparing papers for an objection on
8 behalf of a Settlement Class Member) must provide to the Settlement Administrator (who shall
9 forward it to Class Counsel and counsel for Caviar) and file with the Clerk of the Court a notice
10 of appearance no later than the Exclusion/Objection Deadline.

11 108. The right to object to the proposed settlement must be exercised individually by a
12 Settlement Class Member or his attorney, and not as a member of a group, class, or subclass,
13 except that such individual objections may be submitted by a Settlement Class Member's Legally
14 Authorized Representative.

15 109. Any Settlement Class Member who does not file a timely notice of intent to object
16 in accordance with this Section shall waive the right to object or to be heard at the Fairness
17 Hearing and shall be forever barred from making any objection to the proposed Settlement, the
18 Plan of Allocation, the Fee and Expense Award, and the Enhancement Payments. Settlement
19 Class Members who object to the proposed Settlement shall remain Settlement Class Members,
20 and shall be deemed to have voluntarily waived their right to pursue an independent remedy
21 against Caviar and the Released Parties. To the extent any Settlement Class Member objects to
22 the proposed Settlement, and such objection is overruled in whole or in part, such Settlement
23 Class Member will be forever bound by the Final Approval Order and Judgment.

24 110. In the event that any Person objects to or opposes this proposed Settlement, or
25 attempts to intervene in or otherwise enter the Action, the Parties agree to use their best efforts to
26 cooperate in the defense of the Settlement. Notwithstanding the foregoing, it shall be Class
27 Counsel's sole responsibility to respond to any objections made with respect to any application
28 for the Fee and Expense and Enhancement Payments.

XII. ADDITIONAL PROVISIONS

111. All of the Exhibits to this Agreement are an integral part of the Settlement and are incorporated by reference as though fully set forth herein.

112. The Named Claimants and Class Counsel acknowledge that an adequate factual record has been established that supports the Settlement and, apart from the limited discovery described in the next sentence, hereby waive any right to conduct further discovery to assess or confirm the Settlement. Notwithstanding the prior sentence, the Parties agree to reasonably cooperate with respect to limited confirmatory discovery to be agreed upon related to the last-known addresses of Settlement Class Members.

113. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

114. This Agreement supersedes all prior negotiations and agreements and may be amended or modified only by a written instrument signed by counsel for all Parties or the Parties’ successors-in-interest.

115. The Parties reserve the right, subject to the Arbitrator’s approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be in writing to be enforceable.

116. The Settlement Agreement, the Settlement, the fact of the Settlement’s existence, any of terms of the Settlement Agreement, any press release or other statement or report by the Parties or by others concerning the Settlement Agreement or the Settlement, and/or any negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (i) may not be deemed to be, may not be used as, and do not constitute an admission or evidence of the validity of any Released Claims or of any wrongdoing or liability of Caviar; and (ii) may not be deemed to be, may not be used as, and do not constitute an admission or evidence of any fault, wrongdoing, or omission by Caviar in any trial, civil, criminal, or administrative proceeding of the Action or any other action or proceedings in any court, administrative agency, or other tribunal, or in any arbitration proceeding.

1 117. The Released Parties shall have the right to file the Settlement Agreement, the
2 Final Approval Order and Judgment, and any other documents or evidence relating to the
3 Settlement in any action that may be brought against them in order to support a defense or
4 counterclaim based on principles of res judicata, collateral estoppel, release, good-faith
5 settlement, judgment bar, reduction, waiver, or any other theory of claim preclusion or issue
6 preclusion or similar defense or counterclaim.

7 118. The Parties to the Settlement Agreement agree that the Settlement Amount and the
8 other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
9 resulted from an arm's-length mediation sessions presided over by the Hon. James L. Warren
10 (Ret.), and reflect a settlement that was reached voluntarily based upon adequate information and
11 sufficient discovery and after consultation with experienced legal counsel.

12 119. The Named Claimants and Class Counsel have concluded that the Settlement set
13 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Named
14 Claimants asserted against Caviar, including the claims on behalf of the Settlement Class, and
15 that it promotes the best interests of the Settlement Class.

16 120. To the extent permitted by law, all agreements made and orders entered during the
17 course of the Action relating to the confidentiality of information shall survive this Settlement
18 Agreement.

19 121. The Parties agree that the Named Claimants and Class Counsel are not required to
20 return any documents produced by Caviar until the final resolution of the Action. Within sixty
21 (60) days following the Effective Date, Class Counsel shall return to Caviar all documents
22 produced in the Action, or confirm in writing that all such documents have been destroyed, in a
23 manner consistent with the terms of any applicable Protective Order in the Action, and to the
24 extent practicable.

25 122. The waiver by one Party of any breach of this Settlement Agreement by any other
26 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
27 Agreement.
28

1 123. This Settlement Agreement, including its Exhibits, constitutes the entire agreement
2 among the Parties, and no representations, warranties, or inducements have been made to any
3 Party concerning this Settlement Agreement or its Exhibits, other than the representations,
4 warranties, and covenants contained and memorialized in this Settlement Agreement and its
5 Exhibits.

6 124. This Settlement Agreement may be executed in one or more counterparts. All
7 executed counterparts and each of them shall be deemed to be one and the same instrument
8 provided that counsel for the Parties to this Settlement Agreement shall exchange among
9 themselves original signed counterparts.

10 125. The Parties hereto and their respective counsel agree that they will use their best
11 efforts to obtain all necessary approvals of the Arbitrator and the Court required by this
12 Settlement Agreement.

13 126. This Settlement Agreement shall be binding upon and shall inure to the benefit of
14 the successors and assigns of the Parties hereto, including any and all Released Parties and any
15 corporation, partnership, or other entity into or with which any Party hereto may merge,
16 consolidate, or reorganize.

17 127. This Settlement Agreement shall not be construed more strictly against one Party
18 than another merely because of the fact that it may have been prepared by counsel for one of the
19 Parties, it being recognized that because of the arm's-length negotiations resulting in the
20 Settlement Agreement, all Parties hereto have contributed substantially and materially to the
21 preparation of the Settlement Agreement.

22 128. Except where this Settlement Agreement itself provides otherwise, all terms,
23 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been
24 relied upon by the Parties in entering into this Settlement Agreement.

25 129. This Settlement Agreement shall be governed by and construed in accordance with
26 the laws of the State of California, without regard to choice of law principles. The Arbitrator
27 shall maintain jurisdiction over any action based on this Settlement Agreement, or over any action
28 to enforce any of its terms. To the extent the Arbitrator or the Court (or any other tribunal)

1 determines that the Arbitrator lacks jurisdiction over an action based on this Settlement
2 Agreement (including any action to enforce its terms), then the action shall be venued in the
3 California Superior Court in and for the County of San Francisco. All Parties to this Settlement
4 Agreement shall be subject to the jurisdiction of the Arbitrator and, as applicable, the California
5 Superior Court in and for the County of San Francisco, for all purposes related to this Settlement
6 Agreement. This Paragraph relates solely to the law governing this Settlement Agreement and
7 any action based thereon, and nothing in this Paragraph shall be construed as an admission or
8 finding that California law applies to the Released Claims of any Named Claimants or Settlement
9 Class Members who reside outside of the state.

10 130. The headings used in this Settlement Agreement are for the convenience of the
11 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

12 131. In construing this Settlement Agreement, the use of the singular includes the plural
13 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

14 132. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon
15 his or its independent judgment and upon the advice of his or its counsel, and not in reliance upon
16 any warranty or representation, express or implied, of any nature of any kind by any other Party,
17 other than the warranties and representations expressly made in this Settlement Agreement.

18
19 Agreed and Accepted:

20 Dated: May ¹⁹____, 2017

DocuSigned by:
Nadia Rosen
35BC02B404AD40D...

Nadezhda Rosen

21
22
23 Dated: May ____, 2017

La'Dell Brewster

24
25
26 Dated: May ____, 2017

Jeffrey Levin

1 determines that the Arbitrator lacks jurisdiction over an action based on this Settlement
2 Agreement (including any action to enforce its terms), then the action shall be venued in the
3 California Superior Court in and for the County of San Francisco. All Parties to this Settlement
4 Agreement shall be subject to the jurisdiction of the Arbitrator and, as applicable, the California
5 Superior Court in and for the County of San Francisco, for all purposes related to this Settlement
6 Agreement. This Paragraph relates solely to the law governing this Settlement Agreement and
7 any action based thereon, and nothing in this Paragraph shall be construed as an admission or
8 finding that California law applies to the Released Claims of any Named Claimants or Settlement
9 Class Members who reside outside of the state.

10 130. The headings used in this Settlement Agreement are for the convenience of the
11 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

12 131. In construing this Settlement Agreement, the use of the singular includes the plural
13 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

14 132. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon
15 his or its independent judgment and upon the advice of his or its counsel, and not in reliance upon
16 any warranty or representation, express or implied, of any nature of any kind by any other Party,
17 other than the warranties and representations expressly made in this Settlement Agreement.

18
19 Agreed and Accepted:

20 Dated: May __, 2017

21 _____
Nadezhda Rosen

22
23 Dated: May ¹⁵ __, 2017

24 DocuSigned by:

25 _____
La'Dell Brewster

26 Dated: May __, 2017

27 _____
Jeffrey Levin

1 determines that the Arbitrator lacks jurisdiction over an action based on this Settlement
2 Agreement (including any action to enforce its terms), then the action shall be venued in the
3 California Superior Court in and for the County of San Francisco. All Parties to this Settlement
4 Agreement shall be subject to the jurisdiction of the Arbitrator and, as applicable, the California
5 Superior Court in and for the County of San Francisco, for all purposes related to this Settlement
6 Agreement. This Paragraph relates solely to the law governing this Settlement Agreement and
7 any action based thereon, and nothing in this Paragraph shall be construed as an admission or
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17 other than the warranties and representations expressly made in this Settlement Agreement.

18
19 Agreed and Accepted:

20 Dated: May __, 2017

21 _____
Nadezhda Rosen

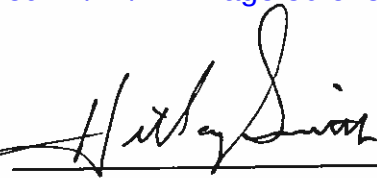
22
23 Dated: May __, 2017

24 _____
La'Dell Brewster

25
26 Dated: May 9, 2017

27 _____
Jeffry Levin

1 Dated: May 11, 2017

By:  _____

2 On behalf of
3 Caviar, Inc. dba Try Caviar
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